Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES

A.L., A MINOR PRISONER,
BY NEXT FRIEND ANNETTE LUNDEBY,
Petitioner-Appellant-Petitioner,
v.
BILL BRUINSMA, Executive Director,
Thomas J. Frederick Juvenile Justice Center,
South Bend, IN, Custodian,
Respondent-Appellee-Respondent.

A.L., A JUVENILE,
BY NEXT FRIEND ANNETTE LUNDEBY,
Defendant-Appellant-Petitioner,
v.
UNITED STATES OF AMERICA,
Plaintiff-Appellee-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI WITH APPENDICES A, B, AND C

ANNETTE LUNDEBY
5579 FARMINGTON DRIVE
OXFORD, NC 27565

Questions Presented

Pre-trial Habeas, Adult Status, *Mickens*

1. If release/dismissal happens before ruling in/by this Court, would the mootness exception apply?

2. Does pre-trial habeas still exist?

3. By which organization's standard is age of minority/majority determined?

4. Is subject matter jurisdiction satisfied where the parent is excluded?

5. As a matter of law, can there possibly be a commercial nexus?

6. Where the parents are not served with the original pleading, how is Due Process satisfied?

7. Where is satisfaction of extradition?

8. Where's the proof that HAYS has signature authority to represent Plaintiff?

9. How is continued detention justified in the face of A.L.'s actual innocence?

<u>(Blind) Statutory Challenge</u>

10. May the congress, by giving the same old mens rea and actus reus a new name, allow the executive or the judiciary to end run Due Process?

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Petition for a Writ of Certiorari

Next Friend, mother of A.L., a minor, petitions for a writ or writs of certiorari to the United States Court of Appeals for the Seventh Circuit as follows:

Citations to decisions below

None.

Jurisdiction

(i) Date Consolidated Appeals Were Dismissed
24 June 2009 [+90: 22 Sep 2009].
Nos. 09-2460 (*Mickens*), 09-2546 ("transfer");
No. 09-2461 (habeas).

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1254(1) (final), 2101(c).
Habeas is a traditional "final judgment."
The Adult Status and *Mickens* issues are "final orders" per the Collateral Order Doctrine. No facts in dispute; solely question(s) of law.

(v) Regarding Rule 29.4(b)
United States of America is a party to the underlying case. All activity in federal courts.

No Oral Argument Requested

Oral argument is not expected to aid the resolution of these matters.

Statement of the Case

Trial court jurisdiction

Pre-trial habeas—28 U.S.C. § 2241(a).

The underlying case—none.

It's a guess that Plaintiff relies (will rely) on 18 U.S.C. § 7. But there is no commercial nexus. *Lopez.*

No commercial nexus

A.L. is 16 years old.

Nightmare in North Carolina

The arrest and detention without bail.

About 10:30 p.m. on 5 March 2009, an armed highway patrolman with an armed FBI agent knocked on the front door. They told Next Friend that A.L. had hit-and-run someone's car. The reality was that someone had hit-and-run A.L.'s car. They said, "Go get your son." As Next Friend left the area near the door, a dozen armed agents poured into Next Friend's home in Oxford, North Carolina, to execute a search warrant. No affidavit was produced. The agents wouldn't let Next Friend get the 12-year-old daughter, and instead the agents forced the 12-year-old daughter out of bed, as well as A.L. [1]

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[1] All of the daughter's electronics (Wii, Playstation, and the like) were taken. Nothing has been returned.

The daughter has VonWillebrand, a rare, genetic blood disorder that prevents clotting even for normal cuts, etc. Unlike hemophilia, this one is very difficult to detect. If not treated ahead of time, fatal exsanguination can happen in minutes. Since it's a known issue, the normal activities for kids her age are impossible. No basketball, hiking, biking, skating, gymnastics, soccer, softball, volleyball, diving, skiing, etc. What she has for entertainment and socializing are her electronics.

No charging instrument has ever been served, but rumor has it that the reason for the armed home invasion was to gather evidence regarding an alleged bomb threat delivered on a Sunday evening, around 9:00 p.m., 15 February, to one, two, three colleges and/or universities including Purdue.

Upon arrest, A.L. was first kept with the adult population in Raleigh for a total of about 30 hours.

The "extradition" proceeding.

About 10:00 a.m. on 6 March, the court in North Carolina decided that "extradition" to Indiana was justified. Next Friend received Notice of this proceeding, but the time period for finding counsel was practically non-existent. Counsel was appointed, but how does a minor consent to that?

Moreover, no charging instrument has ever been served on Next Friend. How is defense to anything, including extradition, possible without Notice of the charge justifying any judicial proceeding?

The public pretender's "defense" strategy.

"Waive everything in sight." A.L. was in South Bend for ***how long*** before the pretender even bothered to pay A.L. a visit? A month (30 days)! A.L. was incarcerated ***two and a half months*** before "defense" counsel even started to look into A.L.'s alibi! Not one alibi witness was subpoenaed for any detention proceeding. Thirty-day speedy trial provision—waived, without so much as a thought to consult with Next Friend, or even A.L. Putting on a defense at the detention hearing by at least having the alibi witnesses testify—waived. Right to counsel, or at least someone who cares, to accompany A.L. during the requested video tape session with the

either the prosecutor, Bruinsma, or both—waived. Not only did the public pretender waive the objection to the video tape session, generally, but also he literally ***SCREAMED*** through the phone at Next Friend to demolish Next Friend's resistance to waiver of A.L.'s rights. This was the ***one*** issue for which the pretender consulted Next Friend, who had originally insisted that Bruinsma get a warrant.

The *Mickens* objection was not filed lightly.

Most recently, "defense" counsel wanted also to waive Grand Jury indictment. Isn't it interesting that the first Grand Jury after "transfer" to adult status *didn't* indict?!

Age of minority determined by *which* organization's standards?

Since this is a federal matter, for which a lot of trouble went into ripping A.L. from his home and shipping him via Express Mail to Indiana, of course it made instant and perfect sense to the pretender to agree with Plaintiff to look to North Carolina law to evaluate A.L.'s "age of minority." Just as relevant is the fact that some tribes in Africa studied by National Geographic consider their young people adults at age 12.

The pedophile-level strip search policy.

Who besides pedophiles need to compel/watch warrantless, purposeless strip searching, *cf. Redding*, at the frequency imposed upon A.L.? On at least one occasion, A.L. was strip searched behind a very open door. When Next Friend made in-person inquiry into who was doing all this strip searching, the supervisor "felt threatened" by Next Friend's investigation. All involved may rest assured there'll be some PPG and

VPG testing in the near future.

On at least one occasion, the shackles on A.L.'s ankles were so tight that his ankles bled. The scars are visible.

Effective termination of parental rights.

Next Friend may as well have been a stripe in the road the way the system has tried to run over her. She was systemically and deliberately excluded from the entire case, with the exception of that pro forma inclusion in that first proceeding, until the breakthrough events starting with recognition by the trial court in South Bend. No Notice of anything had been sent to her. No documents filed had been sent to her. To date, no transcripts have been provided. She had physically to be present in South Bend just to get *something* in the way of a defense started for her son, which she had to do personally. The documents delivered to her are listed in the Brief below. Still not available to her are a charging instrument and hearing transcripts. [2] She has also not yet seen that video that the pretender ***SCREAMED*** through the phone at her to authorize.

No STATE with an interest in parental rights has ever been made party to any of these proceedings.

"Transfer" is but a "partial" emancipation.

A minor is an adult for purposes of the *charges*, but still a minor for purposes of *detention housing*? This "yes you are; no you're not" emancipation policy is internally confused. One is either emancipated for all purposes or for no purpose. Emancipation is

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[2] Yes, it's a cost savings. But, when one's son is in jail, halfway across the country, for a crime that was impossible for him to commit, cost is not measured in dollars.

another form of termination of parental rights. Where are the remaining indispensable parties?

Agency authority is *proved* where?

No evidence of actual or apparent authority exists anywhere of Record regarding the prosecutor's authority to act as agent for Plaintiff.

Another bogus federal case!

The pressure on A.L. to plea/confess is outrageous and enormous. But, they haven't broken him! Reality provides a tremendous reservoir of fortitude.

Actual innocence is typically a post-judgment habeas theory, but where it's so conscious-shockingly obvious that "they've got the wrong guy," it's impossible not to raise this point pre-trial.

The first "official story" was, "The computer did it." That was so facially bogus that the bogus-case story writers had to come up with a new plot line. So, that developed into, "It was a phone call." A.L. was nowhere near the land line on which "the call" was allegedly made around 9:00 p.m. that Sunday evening, 15 February. The pretender couldn't even be bothered to study the phone records to see that no such alleged call was made on the land line. Next Friend has heard the alleged audio recording, and that is not A.L.'s voice.

Procedurally

The appellate court consolidated the three appeals, which consolidation is adopted and applied for this petition.

Argument

Pre-trial Habeas, Adult Status, *Mickens*

1. If release/dismissal happens before ruling in/by this Court, would the mootness exception apply?

Since the Grand Jury *didn't* indict, and since the clock is ticking, this is a very real issue. [3]

A fact pattern of arresting an innocent minor, ripping him from his home and community, shipping him halfway across the nation, saddling him with a commercial relationship with a pretender (A) he can't even consent to having, (B) who couldn't care less, and (C) who A.L. fired, and allowing conscious-shocking levels of psychological torment and coercion to induce a confession to committing a crime he didn't commit, and then releasing him as his habeas comes before this Court, is a fact pattern capable of repetition, certainly subject to involving the very same party, and yet escape review. *Cf. Spencer*, 523 U.S. at 17-18; *Roe v. Wade*, 410 U.S. at 123-29.

2. Does pre-trial habeas still exist?

Yes, as it must. *Hamdan*; *Boumediene*; *Munaf*. Relief in *Munaf* was denied, but not because it was *pre-trial* habeas.

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[3] As this goes to print, there's a rumor of pending indictment. Should that happen, we'll also study, in the pre-trial habeas context, to mitigate damages, the Separation of Powers problem arising from the difference between a Grand Jury of the United States and a Grand Jury of the United States District Court.

3. By which organization's standard is age of minority/majority determined?

Federal case?—federal standards.
Lopez.

"Partial" emancipation is untenable.

"Partial" emancipation is an internally confused policy. To be an adult at 18 for some issues but 21 for others means that even at 18 one is only "partially" emancipated. To be tried as an adult, one must be treated as an adult, for all purposes. Tobacco, alcohol, Hollywood productions, application to Special Forces, and etc. Adulthood is a full-package deal. Either one is, or one isn't. This "yes you are; no you're not" fence straddling self-proves the *absence* of adulthood.

4. Is subject matter jurisdiction satisfied where the parent is excluded?

Commercial consent comes from what source?

Consider the "licensed" family, where the "commercial" activity is that of "making babies." *Cf. Griswold* (directly related to the privacy analysis is the commercial analysis; no STATE may compel commerce). "Ownership" of the child's labor, etc., is a *state* issue. To date, Next Friend is unfamiliar with there being any commercial interest in the federal system of the child's labor, etc. *Cf. Lopez.* Where the defendant is a minor, the parent ***must*** be treated as a party at all times and for all procedural purposes. *In re Gault.* Otherwise, how is the minor bound by anything?

Effective termination of parental rights.

IN THE UNDERLYING CASE.

Moreover, by excluding the parent, in sheer defiance of *In re Gault*, those operating the federal system purport to create an effective termination of parental rights. Where no STATE is invited to participate, this policy of parental exclusion raises the *subject matter jurisdiction* issue of failure to join indispensable parties. *Cf.* FED. R. CIV. P. 12(b)(7).

No case involving a minor, even to determine status of minority or adulthood, is a criminal case. It's ***always*** a civil case. It may never be a criminal case, i.e., it may always be a non-case (hence, civil for that reason). But, even if we presume into existence the wholly untenable prospect of "partial" emancipation, there's no *criminal* case until there's a charging instrument filed against an adult.

Even then, there's no *criminal* case until the prosecuting authority proves standing. All "criminal" cases are non-cases until the prosecution proves standing. *Cf. Austin*, 420 U.S. at 668 (Blackmun, J., dissent); *Deposit Guaranty*, 445 U.S. at 353 (Powell, J., and Stewart, J., dissent); *Williams*, 472 U.S. at 36 (dissent) (citing *Austin*). Some matters never stop being non-cases. *Cf. Rockwell Int'l* (the final pre-trial order confirmed that this was a non-case). While trial *may* be used to establish jurisdiction, thus also standing, such cases are *still* non-cases, i.e., ***civil***, until the feds prove standing, i.e., an "actual case or controversy." *Defenders of Wildlife.*

For the feds to prove standing, they have to prove, among other things, a commercial nexus. *Lopez.* Where that's facially and legally impossible, the case never stops being a non-case; hence, civil.

To presume a "case or controversy" into existence is to relieve the feds of their burden. *Mullaney* (citing *In re Winship*); *Heiner*, 285 U.S. at 329 (tax case; irrebutable presumption issue); *Johnson* (directed verdict of guilt relieved State of its burden). Since the feds can ***never*** prove a commercial nexus, here, to proceed at all is to presume standing.

So, the mere labeling of the underlying matter as a "criminal" matter presumes subject matter jurisdiction that hasn't, doesn't, and can't exist. It suggests a set of procedures that don't and can't apply. It puts the cart way ahead of the horses, the most conspicuous and despicable problem being the effective termination of parental rights, in order to produce the wholly untenable status of "partial" emancipation, and ***that*** without participation by ***any*** STATE with an interest.

May a trial court compel a minor, who already has no capacity to enter into interstate commerce, to accept appointed counsel? Surely "legal services" are not "necessaries!" Thus, where the minor disavows all agreements, and even fires the pretender, in writing and of Record, of what possible effect is ***any***thing done by ***any*** appointed counsel that has been compelled upon the minor, i.e., where no parental participation occurred, at all?

Further, in this context where we're looking at "partial" emancipation, for what acts does the "partially" emancipated minor actually have enforceable capacity? Outside the "universally" accepted commercial concept of necessaries, [4] capacity can't be "yes ***and*** no." Capacity exists for all purposes or for none. In short, how ridiculous is it to

[4] Which actually operates as a limit on the parents.

emancipate a minor for adult adjudicatory status in the federal system (or the state system, too, for that matter) while simultaneously saying that he still has no capacity to contract for even one purpose? "You're an adult, but you'll be housed with the juveniles, because you're not really an adult." ***Huh??*** This manifestly confused policy is just flat out untenable.

In sum, the bludgeoning of the proper procedures that run to the benefit of the parents (or legal guardians) applicable to ***civil*** matters, which ***all*** matters involving minors are from the outset, isn't merely a Notice and opportunity to be heard problem, which type of matter may be waived. It's a problem that sounds in termination of parental rights and compelled consent by the judicial system over and against the minor and his parents.

In general, consent cannot be compelled. *Rudzewicz* (jurisdiction doesn't flow from fraud, undue influence, or overwhelming bargaining power); FED. R. CIV. P. 8(c); *Ballard* (local rules don't justify (criminal) Due Process violations); 28 U.S.C. § 636(a), (c) (magistrate participation is "by consent only"); *Gonzalez* ("If the parties consent ....") (construing § 636(b)); *Boddie* (denial of access); *Harbury* (study of denial of access claims).

If there's an exception, it's this: the parent may compel the child to consent. [5] Thus, in this present context, it's a question as to whether A.L. or Next Friend is the one being compelled to consent/agree.

Compelled agreement is the exact *antithesis* of the very soul of this state. A coerced will is not evidence. *See* 1 PAGE §§ 5.7, 15.11. A coerced trust is not

[5] The obvious litigation exception is where the minor asserts his rights that the parent/guardian wants to waive.

evidence. BOGERT §§ 42 at 434, 44 at 452 and n.16; *Pollock I*, 157 U.S. at 553-54 (1st ¶ of opinion) (non-agreement by even one beneficiary prevents amendment of the agreement, i.e., prevents creation of a new agreement). A coerced commercial transaction is not evidence. U.C.C. § 1-103; *Planters' Bank* ("government" as proprietor); *Griswold* (STATE ***cannot*** compel commerce); Lev. 19:35-36 (honest system of weights and measures); *Gonzalez* (magistrate participation cannot be compelled); *Arnold* (vacated per *Booker*) (tax case; "evidence," including never-before-seen charges, not presented at trial and not agreed to in sentencing is inadmissible for sentencing). In the ultimate setting, a coerced confession is not evidence. *Escobedo*; *Miranda*. The coercive environment vitiates the very "evidence" it purports to create. *See Rudzewicz*, 471 U.S. at 486; *Ohralik* (undue influence in legal services environment, in particular) (note that those "victimized," here, are 18 years old); *Bates* (along the same line; focus on legal services ads).

Even if it *were* possible to separate a minor from his parents at any point during an allegedly criminal proceeding, until there's a formal ruling of that "partial" emancipation, the minor is still a minor, for all purposes, including the lack of capacity to make commercial decisions (except for necessaries, of course). That is the job/role of the parent.

Therefore, where the parent, who is the minor's Next Friend for all purposes in the case involving the minor, is excluded, that's an effective termination of parental rights. That gives rise to all the inherent, incumbent procedural and substantive issues. Here, it's also coupled with effective compelled consent, not

just of A.L., but actually (also) of Next Friend, starting with the issue of appointed counsel.

IN THE HABEAS CASE.

Where "strangers" to the confined *adult* have standing to pursue the equitable equivalent of habeas, *Graham*, surely the mother of the confined minor has all the more standing to pursue habeas for her son.

If this is otherwise, then compelled consent to appointed counsel truly is also an effective termination of parental rights, and *that* without even Notice to, much less opportunity to be heard by, any STATE with an interest, which entity is an indispensable party. FED. R. CIV. P. 12(b)(7).

5. As a matter of law, can there possibly be a commercial nexus?

While Next Friend has not been allowed access to the Record, it stands to reason that the basis for jurisdiction will be alleged to be 18 U.S.C. § 7, the special maritime and territorial jurisdiction applicable for Title 18 matters. *Cf. Graham.*

For this reason, it's impossible for any federal trial court to have subject matter jurisdiction. *See Lopez.* The *sine qua non* of jurisdiction, i.e., a commercial nexus, is absent, as a matter of law. Thus, USOA has no standing. *Defenders of Wildlife.*

Where the problem is this obvious, the trial courts should be encouraged to activate *Marbury v. Madison sua sponte.*

6. Where the parents are not served with the original pleading, how is Due Process satisfied?

No matter how the case is characterized, Notice is required. *In re Gault*. *Cf. Smith*; *Lloyd v. Alexander*, 5 U.S. at 366 ("A citation not served is as no citation."); *Harris*, 55 U.S. at 339.

Here, it matters greatly that the underlying matter is ***civil*** for all purposes. Should something *justifying* activation of the federal trial court's ***criminal*** jurisdiction exist, then, at *that* time, a ***criminal*** matter might very well be possible to initiate. But, until that time, it's ***civil***.

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections.

Mullane, 339 U.S. at 314. A failure of Notice violates "the most rudimentary demands of due process of law." *Armstrong*, 380 U.S. at 550.

See also Milliken (the Wyoming judgment was valid because service was valid; hence, the Wyoming court *did* have personal jurisdiction); *Peralta* (even "meritorious defense" issue is irrelevant to question of Notice); *Hamdi*; *Internat'l Shoe Co.*, 326 U.S. 310 (1945) (opinion by Black, J.); *Sniadach*; *Boddie*; *Fuentes v. Shevin*; *N. Ga. Finishing, Inc.*; and *Jones*.

Next Friend has received only the paperwork indicated previously. She has no idea what, if any, charges exist. Rumor has it that a Complaint exists. That pleading has never been served on her. *But see*

In re Gault. *See also* 28 U.S.C. § 2249 (respondent may supply documents). [6]

Next Friend has never consented to appointment of any attorney. Until Next Friend is notified of a proceeding, the court proceeds under a theory of compelled consent, not only of a minor, who has no capacity to agree in the first place, but also of Next Friend, who refuses to waive Notice.

Therefore, until the parent, who is the minor's Next Friend for all purposes in the allegedly criminal but actually civil proceeding, has Notice, Due Process is manifestly violated. *In re Gault*. Compelling consent to participation by appointed counsel, intending, systemically, to be an effective termination of parental rights, is not an alternative to Due Process. There is no cure for this at this stage. Nothing prevents the void judgment.

7. Where is satisfaction of extradition?

What is the purpose of extradition?

Extradition isn't an "investigative" (executive) tool. It's a "trial" (judicial) tool.

To be brought/taken to the place having jurisdiction ***to try the crime*** has a galactically self-explanatory condition precedent: the ***existence*** of a criminal case to be tried.

Thus, even in those cases where "risk of flight" is a material issue, there is no risk of flight while one is in custody. And, it turns risk of flight concerns on their ear to say that even the "investigation" can't

[6] Next Friend has no intention of waiving her objection to the failure of proper, timely, meaningful Notice. Still, no charging documents have been delivered by anyone to Next Friend.

continue until the (falsely) accused is brought within the district conducting the investigation.

Extradition isn't justified by the mere existence of an investigation. Extradition is justified if and only if there's an actual case to try.

No federal jurisdiction.

Where ***no*** federal trial court has subject matter jurisdiction, extradition is simply not possible to justify. Period.

No Notice.

A.L. was taken into custody in North Carolina. Through whatever process, he ended up in Indiana. If it is Plaintiff's theory that the event of focus occurred relative to a federal zone near Indiana, then a suspect found outside of that federal zone must be afforded the normal extradition process.

Extradition doesn't "just happen." There's a process, which process can't happen without Notice.

Notice, of a sort, did exist. However, the time between the execution of the search warrant and that first proceeding was approximately 12 hours or less. That doesn't constitute meaningful Notice. Abusively short Notice doesn't justify compelled consent to appointed counsel, either.

Not to get lost in the forest for looking at the trees, "arraignment" that promptly is a good idea. But, how can there be an "arraignment" without service of the charging instrument? How can there possibly be an informed responsive plea until there is an original pleading to which to respond? And, where no original pleading is filed or served, where's any federal court's jurisdiction to entertain extradition? Where's ***the case*** to be tried?

Moreover, Notice consists of more than an announcement of the existence of a judicial proceeding. Notice consists of several things. Here, the focus is on filing and serving the proper paperwork. First, there must *be* a charging instrument. Then, it must be *filed*. Then, it must be *served*. *Cf. Murphy Bros.* (sequence matters regarding filing and serving the original pleading). Where there is no service of any charging instrument, there is no Notice.

No lawful extradition.

To this date, Next Friend has no Notice that there's any ***case*** to be tried. All that has existed to date is an ***investigation***, emphasized by an illegal arrest and horrifically abusive detention conditions specifically designed to coerce a confession.

The "transfer" to Indiana should never have happened. No federal court has subject matter jurisdiction where (A) the case is this heavily dependent on "interstate commerce" and (B) the accused has no capacity to participate in "interstate commerce." Thus, had proper Notice been issued, and had capacity been reflected on early, then not only would there have been no transfer of A.L., at all, but also the entire matter would promptly have been dismissed for all purposes.

8. Where's the proof that HAYS has signature authority to represent Plaintiff?

Plaintiff's burden of proof is not satisfied.

In Indiana, he who alleges agency must prove agency. *Gallant Ins. Co.* Key, an agent's assertion of agency does not prove the agency relationship. *Id.*

Since Next Friend is not in any way buying the assertion of agency, here, how does doj figure into the picture as authorized to sign for Plaintiff?

Aside from this objection to it, the Record is silent regarding HAYS' agency. Key, there can't be an agent without a principal. Since the agent must prove agency, and since no proof of agency exists, the case must be dismissed for want of an authorized agent. *Cf.* FED. R. CIV. P. 11; *Rowland* (artificial entities may appear only through counsel).

Given the placement of the evidentiary burden, where signature authority is presumed over this objection, we're not just dealing with a sufficiency of evidence problem. We're dealing, at the threshold, with a shifting of the burden problem coupled with a heavy dose of irrebuttable presumption.

Regarding the problems with burden shifting, *cf. Beard* (citing *Anderson*, 477 U.S. at 255); *Scott* (citing *Diebold*, 369 U.S. at 655) (summary judgment presumptions are against movant). *Mullaney* (citing *In re Winship*) (to relieve plaintiff of burden is to violate Due Process); *Heiner*.

Regarding the Due Process problem inherent with irrebuttable presumptions, *cf. Elkins*; *Salfi* (in particular part III, which distinguishes *Salfi*); *Cleveland Bd. of Educ.*; *Vlandis*; *Stanley*.

9. How is continued detention justified in the face of A.L.'s actual innocence?

They ***know*** they've got the wrong guy.

They've tried from the outset to cover up that fact by ripping A.L. from everything he's familiar with and then by applying psychologically abusive detention conditions specifically designed to coerce a confession to a crime he just flat out didn't commit.

As already addressed in the Statement of Facts, under the ever-changing theories for this bogus case, it's factually impossible for A.L. to be "the one." He's been psychologically tormented for four months, now (since 5 March), and even that hasn't broken him!

Actual innocence is typically a post-judgment theory, but how can it be avoided in this case? We can't justify turning a blind eye to what all can see. *Rudzewicz*, 471 U.S. at 486 (courts must not be "blind" to what "[a]ll others can see and understand") (citing *Rumely*, 345 U.S. at 44 (citing, in turn, *Bailey*, 259 U.S. at 37 (analyzing a tax statute designed to punish use of child labor))).

(Blind) Statutory Challenge

10. May the congress, by giving the same old mens rea and actus reus a new name, allow the executive or the judiciary to end run Due Process?

The "renaming" game.

Due Process is a fundamental, structural right. No statutory monstrosity may alter or deprive anyone of Due Process. *Cf. Crawford*.

There's a systemic mania that seems to justify complete deprivation of fundamental and structural rights simply because an age old mens rea and actus reus may now be referred to by a new label.

The "renaming game" hasn't worked in some circumstances. The primary source of this discussion is the use of the term "fraud" to cover a panolply of things that are simply not fraud. Statutory schemes using fraud as a disguise for some other clandestine purpose have not survived challenge. *Oyama* (facially discriminatory application of fraud vitiates the statute); *Pollock* (same); *J. H. Munson Co.* (regulation of phone solicitation under the disguise of fraud didn't survive challenge); *Riley* (presumption of fraud was not designed to discourage fraud but to reduce fees charged by fundraisers).

Fundamentally, there's nothing about the label on the alleged offense that for one instant justifies a complete, even maniacal, derogation of fundamental and structural Due Process. Thus, whatever "authority" purports to justify the manifest departure from Due Process extant in this matter is "authority" that is void for violation of Due Process, whether on its face or as applied. [7] *Cf. Yick Wo* (discriminatory (unlawful) application of otherwise valid statute voids out the statute); *Village of Willowbrook* (intentional, irrational, reproducible governmental action; "class of one" recognized).

[7] Should there be an indictment, at least we'll finally learn what statutes are in play, here.

Remedies and Relief Requested

Given the foregoing, Next Friend requests

1. That this Court grant this petition, issue the writ or writs of certiorari, and take jurisdiction of these matters as a whole;
2. That this Court address all the Questions necessary and possible to address;
3. That this Court confirm that the appellate court has jurisdiction over both the adult status ("transfer") issue and the *Mickens* Objection issue through the Collateral Order Doctrine;
4. That this Court rule, ultimately, that A.L.'s restraint of liberty violates the Constitution and/or the laws of the United States, and that he be discharged immediately, if not sooner;
5. That this Court declare that the statutes that purport to justify what's happened in this case as void, in violation of Due Process, Separation of Powers, the Commerce Clause, and/or any other relevant law that exposes the very clear attempt to deep-six Due Process;
6. That if the underlying case is allowed to continue, that A.L. be afforded reasonable bail immediately, and that the present pretender be relieved from all responsibility in the case immediately;
7. The opportunity to brief any (additional) issues the Court may identify;
8. The non-argument calendar;
9. Costs; and

10. Any and all relief at law, in equity, or sui generis to which Next Friend may show herself justly entitled.

Respectfully submitted,

/s/ Annette Lundeby
Annette Lundeby, Next Friend

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If Next Friend had even a remote idea of which statutes were purporting to justify this case, they'd be included in at least one Appendix. C-2

Rule 14.1(i)(vi)—Additional Materials C-2

Reference to the Record will suffice. C-2

Appendix A—Habeas

Rule 14.1(i)(i)—Appellate Rulings

2009 Jun 24—Dismissed

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722
219 S. Dearborn Street
Chicago, Illinois 60604

[SEAL]

Office of the Clerk
Phone (312) 435-5850
www.ca7.uscourts.gov

ORDER

June 24, 2009

BEFORE
DIANE P. WOOD, Circuit Judge
ANN CLAIRE WILLIAMS, Circuit Judge
DIANE S. SYKES Circuit Judge

Nos.: 09-2460 & 09-2546	UNITED STATES OF AMERICA Plaintiff - Appellee, v. A.L., a Juvenile, by and through ANNETTE LUNDEBY acting in her capacity as NEXT FRIEND, Defendant – Appellant

No.: 09-2461	A.L., a minor prisoner, by Next Friend ANNETTE LUNDEBY, Petitioner - Appellant, v. BILL BRUINSMA, Executive Director, Thomas J. Frederick Juvenile Justice Center, South Bend, IN, Custodian, Respondent - Appellee
Originating Case Information:	
District Court Nos: 3:09-cr-00022-I & 3:09-cv-00234-RLM Northern District of Indiana, South Bend Division District Judge Robert L. Miller	

Upon consideration of the **APPELLANT'S MOTION TO MODIFY SCHEDULING ORDER**, filed by Appellant A. L., on June 18, 2009,

IT IS ORDERED that motion is **DENIED**. [⊥ 2]

Appeal nos. 09-246[0], 09-2461 & 09-2546 Page Two

These three appeals were filed in a criminal prosecution in which a minor is represented by counsel. Therefore, the minor's mother has no authority to represent him before this court or to file these appeals on his behalf, so it is as if these appeals have not been filed at all. Accordingly,

IT IS ORDERED that appeal nos. 09-2460, 09-2461, and 09-2546 are **DISMISSED** without prejudice to renewal by the appellant's counsel.

Rule 14.1(i)(ii)—Additional Orders

Appellate Court

2009 Jun 23—Consolidation

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

June 23, 2009

By the Court:

[Case Style – Left side]
UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Nos. 09-2460 and 09-2546 v.

A. L., , a Juvenile, by and through
ANNETTE LUNDEBY acting in
her capacity as Next Friend,
Defendant-Appellant.

A. L, a minor prisoner, by next
friend ANNETTE LUNDEBY,
Petitioner-Appellant,

No. 09-2461 v.

BILL BRUINSMA, Executive Director,
Thomas J. Frederick Juvenile
Justice Center South Bend IN
Custodian,
Respondent-Appellee.

[Case Style – Right side]

] Appeals from the United
] States District Court for
] the Northern District of
] Indiana, South Bend
] Division
]
] No. 3:09-cr-00022-RLM
]
] Robert L. Miller, Jr.,
] Chief Judge.
---------]
] Appeal from the United
] States District Court for
] the Northern District of
] Indiana, South Bend
] Division
]
] No. 3:09-cv-00234-RLM
]
] Robert L. Miller, Jr.,
] Chief Judge.
]

ORDER

The court, on its own notion, orders that these appeals are CONSOLIDATED for purposes of briefing and disposition

The briefing schedule is as follows:

1. The appellant shall file her consolidated brief and required short appendix on or before July 15, 2009.

-- over -- [⊥ 2]

2. The appellees shall file their respective consolidated briefs on or before August 14, 2009.

3. The appellant shall file her consolidated reply brief, if any, on or before August 28, 2009.

IT IS FURTHER ORDERED that the parties fully address in their respective briefs the issue of this court's jurisdiction over Appeal Nos. 09-2460 and 09-2546.

NOTE: Counsel should note that the digital copy of the brief required by Rule 31(c) must contain the entire brief from cover to conclusion. The language in the rule that "[t]he disk contain nothing more than the text of the brief ... " means that the disk must not contain other files, not that tabular matter or other sections of the brief not included in the word count should be omitted. The parties are advised that Federal Rule of Appellate Procedure 26(c), which allows for three additional days after service by mail, does not apply when the due dates of briefs are set by order of this court. All briefs are due by the dates ordered.

Important Scheduling Notice

Notices of hearing for particular appeals are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals[,] after the filing of the appellee's brief. If you

foresee that you will be unavailable during a period in which your particular appeal might be scheduled, please write the clerk advising him of the time period and the reason for such unavailability. Session data is located at http://www.ca7.uscourts.gov/cal/calendar.pdf. Once an appeal is formally scheduled for a certain date, it is very difficult to have the setting changed. See Circuit Rule 34(e).

District Court

2009 Jun 3—Judgment

United States District Court
Northern District of Indiana

AL, a Minor Prisoner by
Next Friend Annette Lundeby
Petitioner

JUDGMENT IN A CIVIL CASE [1]

v.

Case No. 3:09cv234

BILL BRUINSMA, PSY D HSPP
Executive Director, Thomas J Frederick Juvenile
Justice Center South Bend IN Custodian
Respondent

[ ] **Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] **Decision by Court.** This action came to trial, hearing or consideration before the Court. The issues have been tried, heard or considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Petition and Amended Petition for Writ of Habeas Corpus are DENIED, and this case is hereby DISMISSED WITHOUT PREJUDICE.

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[1] [N.B. If this is the 7th document in this case, then Next Friend does now have all the documents for this case. A concern raised below was that at least one was still "out." *AL*]

Stephen R. Ludwig, Clerk

S/JDarrah

By _____
Deputy Clerk

Post Judgment Interest Rate: N/A

This document entered pursuant to
Rules 79(a) and 58 of the Federal
Rules of Civil Procedure on **June 3, 2009**.

2009 Jun 3—Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

A.L., a minor prisoner, by next friend Annette Lundeby, Petitioner	)	
v.	)	Cause No. 3:09-CV-234 RM
BILL BRUINSMA, Respondent	)	

ORDER

On May 22, 2009, Annette Lundeby filed a document with the court captioned as a petition for habeas corpus under 28 U.S.C. § 2241 and 2242. M[r]s. Lundeby filed the petition on behalf of her

minor son, A.L., who awaits decision on the government's motion in this court to transfer him to adult jurisdiction. Mrs. Lundeby asserts various objections to the ongoing proceedings, including due process and subject matter jurisdiction challenges. Mrs. Lundeby asks that the court issue a writ of habeas corpus releasing A.L. from pretrial detention and placing him on supervised release pending final resolution of his case. On May 26, Mrs. Lundeby filed an amended petition, substantially identical in substance to the first filed petition. For the following reasons, the court denies Mrs. Lundeby's motions for habeas corpus.

Section 2241 provides district courts with the power to grant applications for writs of habeas corpus made by prisoners, including those "in custody under or by color of the authority of the United States . . . ." 28 U.S.C. § 2241. To be [⊥ 2] eligible for habeas relief under § 2241, a federal pretrial detainee must first exhaust other available remedies. Alden v. Kellerman, 224 Fed. Appx. 545, 547 (7th Cir. 2007) (*citing* Jones v. Perkins, 245 U.S. 390, 391-392 (1918) ("It is well settled that in the absence of exceptional circumstances in criminal cases the regular judicial procedure should be followed and habeas corpus should not be granted in advance of a trial")); *see also* Moore v. United States 875 F. Supp. 620, 624 (D. Neb. 1994) ("[W]here habeas claims raised by a pretrial detainee would be dispositive of the pending federal criminal charges, principles of federal court efficiency require that the petitioner exhaust those claims by presenting them at trial and on direct appeal."). For example, a federal pretrial detainee cannot use § 2241 to

challenge pretrial detention orders that can be challenged under 18 U.S.C. § 3145, United States v. Pipito, 861 F.2d 1006, 1009 (7th Cir. 1987), or to challenge the sufficiency of an indictment where the defendant can still pursue the challenge during his criminal appeal. *See* Allen v. Kellerman, 224 Fed. Appx. at 547; *see also* In re Williams 306 Fed. Appx. 818, 819 (4th Cir. 2009) (dismissing federal pretrial detainee's petition for a writ of habeas corpus pursuant to § 2241 where the defendant could assert his claims in his pending criminal case).

Assuming Mrs. Lundeby stands in her son's shoes for habeas purposes – a dubious assumption – she hasn't exhausted the available remedies or shown that exceptional circumstances justify the relief requested. A.L. may raise challenges to his pretrial confinement and the sufficiency of the indictment as well [⊥ 3] as jurisdictional and due process concerns in the pending pretrial proceedings and, if desired, on appeal. A.L. already has challenged his pretrial detention unsuccessfully and may take an interlocutory appeal of his pretrial detention. Fed. R. App. P. 9 provides that a party may obtain review of a district court order regarding detention of a defendant before judgment of conviction. Mrs. Lundeby hasn't identified any nonfrivolous basis for pursuing habeas relief in advance of trial. *See* Meyers v. Mukasey, 2009 WL 210715 at *1 (E.D. Va. Jan. 28, 2009) (denying federal pretrial detainee's § 2241 petition where the defendant failed to show cause why his allegations regarding a conspiracy between the prosecutor, his defense counsel, and the court couldn't be fairly raised at trial).

Accordingly, the court DENIES A.L.'s first pretrial application for writ of habeas corpus [Doc. No. 1) and A.L.'s first amended pretrial application for writ of habeas corpus [Doc. No. 3] and DISMISSES the action without prejudice.

SO ORDERED.

ENTERED: June 3, 2009

/s/ Robert L. Miller. Jr.
Chief Judge
United States District Court

cc: AL c/o A. Lundeby
J. Masters

Rule 14.1(i)(iii)—Rehearing, or other extension

None.

Rule 14.1(i)(iv)—Judgment of different date

None.

Rule 14.1(i)(v)—Statutes and Rules

If Next Friend had even a remote idea of which statutes were purporting to justify this case, they'd be included, here.

Rule 14.1(i)(vi)—Additional Materials

Reference to the Record will suffice.

Appendix B—Adult Status

Rule 14.1(i)(i)—Appellate Rulings

2009 Jun 24—Dismissed

See Habeas, App. A.

Rule 14.1(i)(ii)—Additional Orders

District Court

2009 Jun 3—Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,	)	
	)	CAUSE NO. 3:09-CR-
vs.	)	22(01)-RM
	)	(SEALED)
A.L., a male juvenile	)	

ORDER

The United States seeks transfer to adult jurisdiction of a teenaged boy, A.L. who lives with his mother and sister in Oxford, North Carolina. The government alleges that A.L., through the use of

sophisticated computer technology, engaged in a series of "prank" bomb threats to several universities (including, most significantly to this court's jurisdiction, Purdue University) and law enforcement agencies.

For the reasons that follow, the court grants the government's motion to transfer.

A.

This court's task is to consider six factors and, ultimately, decide whether the government has shown by a preponderance of the evidence that transfer to adult criminal prosecution would be in the interests of justice. 18 U.S.C. § 5032. [⊥ 2]

1.

The first statutory factor is the juvenile's age and social background. A.L. is sixteen years, six months of age. As the government notes, he is old enough that he could (though the government says "would") be prosecuted as an adult in the courts of North Carolina. *See* N.C. GEN. STAT. § 7B-1604.

A.L. comes from a relatively stable social situation—the death of A.L.'s father three years ago, which came after his parents separated, causes the qualifier. The record contains information that paternal drinking and abuse was a problem before A.L.'s parents separated, but also that A.L.'s father was supportive of A.L. and A.L. misses him.

Home schooling makes A.L.'s social interaction with his peers less frequent (though not necessarily worse) than it otherwise might be. A.L. has a

girlfriend. He appears to spend much of his time on the computer. Even apart from the activities charged, that time has not been spent uniformly well: credit card identifiers and child pornography were found on A.L.'s computer. [1]

The court agrees with the government that A.L.'s Internet associates in partyvanpranks.com appear to have provided the same type of influence over A.L.—supportive in some ways, corruptive in others—that street gangs exercise over teenagers in other social settings.

A.L.'s superior intelligence suggests that he would fit well into a program designed for juvenile delinquents; the difficulties at school that led to his [⊥ 3] withdrawal suggest that there might be problems with his participation in such a program.

2.

The second statutory factor requires examination of the nature of the alleged offense, which in A.L.'s case must be placed against the broader backdrop of

---

[1] [N.B. This information has compelled further inquiry. Trial is the place for the substantive response to this rather than here. But this Court may rest very much assured that the response to this one is coming, and in spades. If there were even a ***remote*** semblance of competent defense counsel, the response would already be of Record, and in spades.

Procedurally, where's the legal justification for the warrant that target's a minor in the first place? Moreover, since artificial entities cannot appear judicially without counsel, there'd better be an authorized attorney's signature on a motion requesting that warrant. If all that exists is a non-attorney's signature, there will be even ***more*** questions for USOA to answer on this one. *AL*]

his alleged work with partyvanpranks.com. For today's purposes, the court assumes the government can prove what it has alleged. *See* United States v. T.F.F., 55 F.3d 1118, 1120 (6th Cir. 1995). Concepts such as leadership, organization, and management resound with sentencing ramifications, so it seems best to avoid those terms at this stage. In the context of the mass entertainment trade of which partyvanpranks.com participants appear to have considered themselves a part, A.L. was a producer and an actor in an ensemble cast.

Partyvanpranks.com produced Webcasts of their "prank" calls, necessitating a server. A.L. acquired the server time through Ventrilo, reserving enough server space for an audience of 300. A.L. funded the server acquisition through a PayPal account he set up. He had the password, though he doesn't appear to have kept that information especially close to the vest. The PayPal account was funded by audience donations and by A.L.'s offering of his services to customers who wanted their schools closed: A.L. offered to close a school for a single day for $5 or for a week for $20. At some points, the PayPal account contained more than $3,000. [2] [⊥ 4]

It doesn't [appear] at this point that A.L. participated directly in each of the "prank" bomb threats that the partyvanpranks.com cast made. It appears that A.L. had speaking roles in threats phoned into Purdue University and Florida State

---

[2] [N.B. Again, this isn't the place for the response. Where the pretender outrageously refuses to put on the defense, refuses to rebut head-on this "information," what else is the court supposed to conclude? *AL*]

University.

The Purdue calls occurred in the evening of February 15, 2009 (a Friday). [3] The caller, who appears to have been A.L., first called the Purdue police and reported that he had placed bombs in three computers in the media lab of the Mechanical Engineering building, one of the campus's largest buildings, and told police they had five minutes within which to disarm the bombs. The call was placed through Skype-placed on a computer rather than a telephone, allowing the Ventrilo audience to hear. The fear in the recorded voice of the Purdue police officer who took the call is palpable. A few minutes later, a second caller (again appearing to have been A.L.) told the Purdue police that he was a student who had just seen a suspicious looking man doing suspicious-looking things with the computers at the lab. This call was made through Spoofcard, so caller ID falsely reported a number on the Purdue campus.

A few minutes later, a caller appearing to be A.L. called the Purdue police again, threatening to detonate the bombs he claimed to have had placed. He stayed on the line for a longer conversation this time, as the police officer tried to talk him into disclosing the bombs' specific locations. The caller appearing to be [⊥ 5] A.L. placed two more calls to the Purdue police, claiming to have activated the devices; both calls were brief.

About thirty police officers from three agencies responded to the Purdue bomb threats. They set up a

[3] [N.B. Actually, 15 Feb 2009 was a Sunday. *AL*]

perimeter and evacuated the building. About a half dozen officers made an initial entry into the building, armed with assault rifles and uncertain of what they would find. The officers believed, based on the phone calls, that the bomber was nearby and watching them, enhancing the risk of police officers armed with high-powered weapons in the middle of a large college campus. Responding officers were on the scene until after 1:00 a.m. as county police bomb squad officers searched vainly for the reported bombs.

A.L. has an alibi for the time in which the calls were placed. As noted earlier, though, to weigh the nature and circumstances of the offense, the court assumes A.L. did what he is charged with having done.

The Florida State calls on February 21 reported bombs in the Leach Recreation Center. A.L. appears to have placed the calls and had a speaking part but not the starring role. The callers learned that about 1,400 people were in the building when they made their first threatening call. The partyvanpranks.com cast and its audience were able to view the reactions to their calls by hacking into a security camera at the recreation center. At first angry that their calls weren't producing the desired reaction, they called the Tallahassee police; their call was forwarded to the university police department (this time the caller pretended to be [⊥ 6] a student wondering why everyone was leaving the rec center). The callers laughed with merriment as they watched police and fire units arrive, evacuate the building, and begin to search for the bombs.

No one answered the partyvanpranks.com cast's further calls to the rec center, so the cast members began to talk among themselves. The lead actor for the calls—"Vaulttackie"—declared he likely would be going to jail for the calls. When asked who made the call, "Vaulttackie" said "Tyrone" (A.L.'s stage name, according to the government) dialed, so he was guilty, too, and would also do time. "Tyrone" told the audience to "hit 1" if they "see all the cops" and asked for donations. "Tyrone" then mentioned that given how many people were evacuated, "somebody could have got their head stomped in."

As February became March, "Tyrone" began calling FBI offices around the country, still using Skype and Spoofcard to make the calls appear to come from somewhere other than A.L.'s home, saying he was the leader of the group that had been making bomb threats and wanted to turn himself in. He also began making the bomb threat calls to schools that he had advertised for sale.

When police tracked the calls back to A.L.'s computer, they found evidence of his participation. They also found credit card information of strangers and child pornography. [⊥ 7]

3.

The third statutory factor is the extent and nature of any prior delinquency record. A.L. has no such record, but he presents a history of conduct similar to what is charged, escalating in severity and frequency.

4.

The fourth factor is A.L.'s present intellectual development and psychological maturity. Two eminent psychologists tested and evaluated A.L. and reported to the court. Both agree that A.L. is quite intelligent. Both find issues that A.L. would do well to address. Neither made any findings to suggest that A.L. is in any way less mature than peers of his age.

5.

The fifth statutory factor is the nature of past treatment efforts and A.L.'s response to those efforts. Because A.L. wasn't known to have participated in criminal conduct earlier, he hasn't participated in any rehabilitative treatment. A.L. participated in psychotherapy for a year or so after his father's death; that treatment appears to have been beneficial, but the family then dropped out. Further therapy was recommended, but not sought. The family re-entered therapy in 2008 to deal with periodic intense conflicts within the family; the family members missed several appointments.

The court would need further information to choose between the government's view that A.L. showed himself uninterested in continuing his [⊥ 8] therapy and the defense view that A.L.'s mother lacked the commitment to continue with the therapy or to get A.L to do so. The psychologists' reports suggest to the court that A.L.'s mother sought the family counseling last year precisely because she couldn't get A.L. to do what she wanted him to do, but that inference is too weak to tip the scales.

At this point, the most that can be said is that A.L. might benefit from treatment, that a different sort of treatment once benefitted him, and that the court has too little information about A.L.'s current state of mind to predict the success of the treatment indicated in 2009.

6.

The final factor is the availability of programs designed to treat A.L.'s behavior problems. Today's ruling makes no difference in the immediate availability of programs. If A.L. is treated as an adult, convicted, and sentenced to a prison sentence that would extend beyond his eighteenth birthday, he would be housed in a juvenile facility until that birthday, when he would be transferred to an adult facility. The imminence of his eighteenth birthday wouldn't keep A.L. from entering into programs at the juvenile facility, but could keep him from finishing them. If A.L. is treated as a juvenile, adjudicated a delinquent, and ordered confined beyond his eighteenth birthday, he would be housed in a juvenile facility and remain in that facility until his confinement expires or his twenty-first birthday. [⊥ 9]

The government's preliminary evaluation of the sentencing guidelines indicate that the advisory sentence might be anything from a little over two years at the low end to about twelve-and-a-half years at the high end.

B.

All statutory factors save one provide support for either ruling available to the court on the transfer motion. A.L. is old enough for adult prosecution in his home state and he associates on the Internet with a criminal crowd, yet he comes from a solid family background and is intelligent enough to reform. He has no juvenile record at all, yet he has engaged in criminal activity well beyond those that would be charged. He is quite bright and appropriately mature. He gained from therapy directed at different problems some time back, but didn't follow through with more recently recommended counseling. The same programming is available in the short run for a juvenile or a juvenile prosecuted as an adult; the primary variable will be the length of detention or sentence.

The nature of the offense, though, strongly favors transfer. The Purdue call was not an isolated incident. A.L. was engaged in this conduct (if he was at all) for profit (as modest a rate as five dollars a school closing might be) and notoriety—neither exactly amounting to fame and fortune, but motivations far removed from the exercise of decision-making not yet mature. His conduct was superficially nonviolent, but he and his co-performers threatened vast violence, [⊥ 10] and their threats touched off responses that created substantial risks of physical injury where there had been no risk before. Assuming the government's ability to prove its allegations, A.L. was something of a follower (though certainly no mere hanger-on) and hasn't been shown to be the sole main honcho of

partyvanpranks.com. But he was a luminary of the cast and an architect of the cast's capability. A.L.'s taunting of police agencies-confessing to FBI offices that would answer the phone and threatening to blow up the offices that wouldn't—indicates a troubling escalation that strongly favors adult treatment.

What the government has shown are not juvenile pranks. They are serious crimes with adult consequences. The evidence on the other statutory factors wouldn't suffice to allow the government to meet its burden, but neither does it offset the potency of this factor as support for transfer to adult jurisdiction. The government has met its burden.

C.

The court GRANTS the government's motion to transfer to adult jurisdiction (filed March 11, 2009).

SO ORDERED.

ENTERED: June 8, 2009

/s/ Robert L. Miller, Jr.
Chief Judge
United States District Court

Rule 14.1(i)(iii)—Rehearing, or other extension

None.

Rule 14.1(i)(iv)—Judgment of different date

None.

Rule 14.1(i)(v)—Statutes and Rules

If Next Friend had even a remote idea of which statutes were purporting to justify this case, they'd be included in at least one Appendix.

Rule 14.1(i)(vi)—Additional Materials

Reference to the Record will suffice.

Appendix C—*Mickens* Objection

Rule 14.1(i)(i)—Appellate Rulings

2009 Jun 24—Dismissed

See Habeas, App. A.

Rule 14.1(i)(ii)—Additional Orders

Appellate Court—"No evidence" point

N.B. By implication, Next Friend's *Mickens* objection is overruled. If the objection had been sustained, there'd be no reason to say that A.L. is still represented, which is the foundation for dismissing the appeals.

Even without a Transcript, this "no evidence" point is still self-proving. The trial court's Docket Sheet is "business record" enough to confirm that the trial court held no *Mickens* hearing.

District Court—What's not there

N.B. On 3 June, the trial court entered a *viva voce* ruling effectively denying Next Friend's *Mickens* objection. Also, the trial court still sees A.L. as represented.

Again, no Transcript, but, as the Docket Sheet will confirm, via what's not there, there's been no *Mickens* hearing even scheduled.

Rule 14.1(i)(iii)—Rehearing, or other extension

None.

Rule 14.1(i)(iv)—Judgment of different date

None.

Rule 14.1(i)(v)—Statutes and Rules

If Next Friend had even a remote idea of which statutes were purporting to justify this case, they'd be included in at least one Appendix.

Rule 14.1(i)(vi)—Additional Materials

Reference to the Record will suffice.